

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: BAIR HUGGER FORCED AIR
WARMING DEVICES PRODUCTS
LIABILITY LITIGATION

MDL No. 15-2666 (JNE/FLN)

This Document Relates To:
All Actions

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO
DISMISS FOR FAILURE TO COMPLY WITH PRETRIAL ORDER NO. 14**

The Court's Pretrial Order No. 14 ("PTO 14"), entered September 27, 2016, sets forth the protocol for the form and service of the Plaintiff Fact Sheet ("PFS"), signed medical authorization, and supporting documents in cases filed in and transferred to this proceeding. Under PTO 14, a plaintiff whose case was pending on the date of the order was required to serve a completed and signed PFS, medical authorization, and supporting documents within 90 days of the date of the order. PTO 14, ¶ 2. For a plaintiff whose case was transferred after the date of the order, the due date for service of these same documents is 90 days after the filing of the plaintiff's complaint or completion of the transfer to this proceeding, whichever is later. *Id.*

Cases where there are disputes concerning PFS deficiencies requiring the Court's attention may be placed on the Court's status conference agenda. PTO 14, ¶ 7. Should a case appear on the agenda for two (2) sequential status conferences, "Defendants may make a motion for dismissal for failure to comply with this Court's Pretrial Order as to the allegedly delinquent party." PTO 14, ¶ 8.

There are several cases where plaintiffs failed to serve the PFS as required by PTO 14 and, to date, remain delinquent:

Case Number	Title	Date Filed	PFS Due Date	Firm Name
<u>0:16-cv-00136-JNE-FLN</u>	Hager v. 3M Company	1/21/2016	12/26/2016	Meshbeshier & Spence, Ltd.
<u>0:16-cv-00621-JNE-FLN</u>	Weimer v. 3M Company	3/10/2016	1/27/2017	Lockridge, Grindal, Nauen, PLLP
<u>0:16-cv-02755-JNE-FLN</u>	Fraley v. 3M Company	8/16/2016	12/26/2016	Bernstein Liebhard, LLP
<u>0:16-cv-02757-JNE-FLN</u>	Alford v. 3M Company	8/16/2016	12/26/2016	Bernstein Liebhard, LLP
<u>0:16-cv-02772-JNE-FLN</u>	Wilburn v. 3M Company	8/18/2016	12/26/2016	Bernstein Liebhard, LLP
<u>0:16-cv-02803-JNE-FLN</u>	Johnson v. 3M Company	8/19/2016	12/26/2016	Bachus & Schanker, LLC
<u>0:16-cv-02874-JNE-FLN</u>	Garro v. 3M Company	8/25/2016	12/26/2016	Bernstein Liebhard, LLP
<u>0:16-cv-02896-JNE-FLN</u>	Toler v. 3M Company	8/26/2016	12/26/2016	Bachus & Schanker, LLC
<u>0:16-cv-03383-JNE-FLN</u>	DePriest v. 3M Company	10/6/2016	1/4/2017	Bernstein Liebhard, LLP
<u>0:16-cv-03553-JNE-FLN</u>	Barrett v. 3M Company	10/18/2016	1/16/2017	Gustafson Gluek PLLC
<u>0:16-cv-03781-JNE-FLN</u>	Fling v. 3M Company	10/31/2016	1/29/2017	Bachus & Schanker, LLC

One of the plaintiffs listed above, Alford (16-cv-2757), filed a notice of voluntary dismissal without prejudice on January 25, 2017. The purported dismissal without prejudice was filed *after* Defendants 3M Company's and Arizant Healthcare, Inc.

(collectively “Defendants”) answered Plaintiffs’ Master Long Form Complaint and Jury Demand on July 8, 2016 and August 31, 2016. Rule 41(a) of the Federal Rules of Civil Procedure permits voluntary dismissals without an order from the court or stipulation from defendants only if filed prior to defendants’ answer to the complaint. *See* Fed. R. Civ. P. 41(a). Plaintiff Alford’s purported dismissal thus was never effectuated, and the case should be treated as pending and subject to PTO 14.

Defendants placed the above cases on the agenda for two sequential Court status conferences – the first on March 10, 2017 and the second on April 14, 2017. *See* Declaration of Benjamin W. Hulse, Ex. A and B; *see also* Court’s Order entered March 13, 2017 [Dkt. No. 270] (cancelling upcoming status conference and identifying cases with disputes, including those above). Dismissal of these cases with prejudice is therefore appropriate under PTO 14, ¶ 8, and Defendants respectfully request the Court grant their motion regarding same.

Dated: May 10, 2017

Respectfully submitted,

s/ Benjamin W. Hulse

Jerry W. Blackwell (MN #186867)

Mary S. Young (MN #0392781)

Benjamin W. Hulse (MN #0390952)

BLACKWELL BURKE P.A.

431 South Seventh Street

Suite 2500

Minneapolis, MN 55415

Phone: (612) 343-3256

Fax: (612) 343-3205

Email: blackwell@blackwellburke.com

myoung@blackwellburke.com

bhulse@blackwellburke.com

Bridget M. Ahmann (MN #016611x)

FAEGRE BAKER DANIELS LLP

2200 Wells Fargo Center

90 South Seventh Street

Minneapolis, MN 55402

Phone: (612) 766-7000

Email: bridget.ahmann@faegrebd.com

**Counsel for Defendants 3M Company
and Arizant Healthcare, Inc.**